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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/534,039

05/06/2005

Paulo Do Rosario

0678-1001

2398

466 7590 01/25/2010

YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

01/25/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/534,039 | <b>Applicant(s)</b><br>DO ROSARIO ET AL. |  |
|                              | <b>Examiner</b><br>J. Casimer Jacyna | <b>Art Unit</b><br>3754                  |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 15-26, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 15-26, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 13, 15-18, 21-25, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Goda 3,741,444. Goda discloses a dispensing device including a reservoir 10, an ejection assembly 40 that is supported on a wall 33 of the reservoir, an actuating member push-button 44 with a vertical actuating direction on the central axis of the reservoir 10, a connecting member which is a flexible connecting tube with the first end of the connecting member connected to the actuating member at a first end horizontal direction 60 and a second end of the connecting member 75 connected to a separate and distinct outlet member 70 in a second and different direction that is adjustable by the user orientation of arm 99 and can be adjusted to a position that does not extend in the same vertical flat plane as a line directly connecting the actuating member and the outlet member wherein the outlet member is fixedly connected to the reservoir at 73. In regard to claims 32 and 33, Goda additionally discloses a housing 33 and 10, a reservoir as is the interior of 10, a pump 43, a dip-tube 61, an outlet sleeve into which 60 is inserted adjacent 52, and a nozzle 81 that is arranged horizontally along 99 and is connected to the housing via 99 at 70 as claimed.
3. Claims 19, 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goda 3,741,444 in view of Lee 2003/0160070. Goda discloses a dispensing device substantially as claimed but does not disclose the reservoir to be non-circular. However, Lee teaches another pump dispenser that is non-circular as shown in figures 4 and 7. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the invention was made that the reservoir of Goda could be non-circular as, for example, taught by Lee because one of ordinary skill in the art would have considered the rectangular and oval shapes of the Lee reservoir as shown in figures 4 and 7 as art recognized equivalents that would work equally well for the Goda reservoir with a high probability of success and would have been an obvious variation to try in the Goda dispenser.

4. Claims 13, 15-23, 25, 26, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell 2,655,287 in view of Goda 3,741,444. Campbell discloses a dispensing device including a housing that contains a reservoir 10, a pump 60, a dip tube 50, a manually depressed push-button 62 with 12, an horizontal outlet sleeve 107, a flexible tube 14 connected to the sleeve at a first end and a horizontally arranged nozzle 20 as shown in figure 1 connected at a second end 108 of tube 14 wherein the nozzle 20 is horizontally connected to various fixtures 26 as shown in figure 1 wherein at least some of the fixtures will be oriented in a direction that is different from the horizontal sleeve 107 as claimed. Consequently, Campbell discloses a pump dispensing device substantially as claimed but does not disclose the pump or the actuator 62 to be aligned along the central axis of the reservoir as called for in claim 13, nor the nozzle to be fixed to the housing as called for in claims 32 and 33. However, Goda teaches another pump dispenser having the actuator and pump 43, 44 aligned along the central axis of the reservoir 10 for the purpose balancing the force and weight distribution of the device and having a flexible hose connected nozzle fixed to the housing via frame 99 for the purpose of assisting a user in supporting the nozzle.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Campbell with a centrally located actuator and pump as, for example, taught by Goda in order to balance the force and weight distribution of the device and to assist a user in supporting the nozzle. In regard to claim 19, the reservoir is oval as shown in figure 2.

5. Applicant's arguments filed 12/29/2009 have been fully considered but they are not persuasive. Applicant contends that the connecting member 60 of Goda is the outlet member and that it is not fixedly connected to the reservoir. However both the claims and the rejection clearly identified the outlet member as a separate and distinct element from the connecting member. Lines 16-21 of claim 13 clearly call for the connecting member to be a flexible tube with first and second ends which was and is clearly identified as flexible tube 60 in Goda. Line 19 of claim 13 clearly called for the second end of the flexible tube connecting member to be connected to a separate and distinct element called an outlet member which outlet member was and is defined as being fixedly connected to the reservoir on lines 26-27. The rejection clearly defines element 70 of Goda to be the outlet member which outlet member 70 is connected to the second end of the flexible tube connecting member as called for in line 19 of claim 13 and is also fixedly connected to the reservoir via cap 33 as called for in lines 26-27 of claim 13. In regard to claim 32 and 33, Applicant contends that Goda does not teach a housing and that the nozzle 81 does not extend horizontally because it is connected to the reservoir via a flexible tube. However, container 10 and cap 33 constitute a housing as claimed with the reservoir being the interior of the container 10 and the nozzle 81 can

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be fixed into a horizontally extending position in use such as that shown in figure 1 with the nozzle 81 secured in a horizontal position within 99, even though it can later be moved into another position. In regard to Campbell, 62 is a pushbutton that is manually depressed via lever 12. Applicant further contends that sleeve 107 does not diverge from the vertical flat plane, however, it is noted that the nozzle 20 can be connected to a plurality of fixtures 26 some of which will be facing in a direction outside the vertical flat plane wherein nozzle 20 will then be oriented outside the plane as claimed since flexible hose 14 does not require any movement of the sleeve 107 wherein only the nozzle 20 is moved to connect to the various fixtures 26. Lee is used for a teaching of various shapes which is not addressed by Applicant. Applicant's arguments regarding the obviousness rejection over Campbell and Goda are the same as the anticipation rejection and are addressed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754